IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 409 OF 2004

Rajesh Jain ..Petitioners.

vs.

M/s. Ashish Investments

& Ors. .. Respondents.

Mr.R.S. Pandey for petitioner.

Mr.N.J. Devashree for R.Nos. 1 & 2.

CORAM : S.U.KAMDAR, J.

DATE : 1st DECEMBER,2004.

P.C.

1. The petitioner is challenging the award dated 15.7.2004. Some of the material facts in the present case are as under :-

2. The petitioner herein entered into a transaction with the respondent nos. 1 and 2. Respondent no. 2 is the main stock broker of the Bombay Stock Exchange. The respondent no. 1 is the subbroker of respondent no. 2. In respect of the transaction entered into by and between the parties on the stock exchange disputes and differences arose and the petitioner herein filed a claim before the

arbitrator seeking recovery of a sum of Rs.5,02,385.00 on account of non-rectification of bad delivery to the tune of Rs. 16,494/- and speculation loss incurred by the Respondents to the tune of Rs. 4,85,891/-. The respondent nos. 1 and 2 also claim interest at the rate of 18% amounting to Rs.1,35,644/- as also cost and other expenses.

3. The matter was referred to arbitration of the Bombay Stock Exchange in Reference No. 219 of 2003. After hearing both the parties, the learned Arbitrator of the Bombay Stock Exchange, who was the sole arbitrator has granted the claim of Rs.4,96,159/-. The learned Arbitrator has further directed the petitioners to pay interest at the rate of 12% on the aforesaid amount from 1.4.2001 till payment and/or realisation.

4. This award is challenged in the present petition by the petitioner essentially on two grounds:- (i) that the claim made by respondent nos. 1 and 2 herein before the Arbitrator was barred by law of limitation and (ii) that there is no arbitration agreement by and between the petitioner and respondent nos. 1 and 2 and, therefore, the arbitrator has no jurisdiction to entertain the said claim and pass the impugned award.

5. I have heard the parties. In so far as the

issue of limitation is concerned, it is an admitted position that the last entry on the books of account is of 6.12.2000. This pertains to return of bad delivery of the shares by Uni Chem Laboratories. The dispute which is raised by the petitioner herein is that those are not the shares which were in his name and, therefore, the question of bad delivery thereof or effecting the entry for non-rectification in respect of the same in his books of account does not arise. However, the learned Arbitrator has given the finding in the arbitration that the petitioner has admitted before the Arbitrator that the shares of Uni Chem Laboratories Ltd., were sold by him through the respondent no. 1. Once this is so admitted then obviously the return of the shares due to defects therein as and by way of bad delivery has to come to the same account. In view thereof, the finding of the Arbitrator that the period of limitation has to be computed from 31.3.2000 and thus the period of 3 years will expire on 31.3.2004. The said computation made by the Arbitrator on the basis that since there is an entry of 6.12.2000 the period of limitation commences from 31.3.2000. Even if the said period is counted from the date of 6.12.2000 then also the same will expire only on 6.12.2003. Admittedly the claims are filed on 4.11.2003 and, therefore, the same are within the period of limitation. Thus, I do not find any merit in the contention of the learned counsel for the

petitioner that the claim is barred by law of limitation and arbitrator ought to have therefore rejected the same.

6. Turning to the second contention raised by the petitioner that there was no privity of contract by and between the parties and, therefore, the arbitrator has no jurisdiction to entertain the claim. The Arbitrator has considered the said aspect in the Award and has given a finding of fact that the transactions have taken place on the stock exchange. He has also called trade files from the stock exchange to satisfy himself that in fact such transactions which are reflected in the contract notes of the broker have been duly entered into the said trade files. The trade files are the records maintained by the Stock Exchange of daily transactions entered by the broker on the stock exchange. After going through the material produced before him by the parties, the learned Arbitrator has held that there are dealings and transactions by and between the parties and therefore Bye-law 248 (a) applies and thus there is an arbitration agreement to refer the differences and disputes to the Arbitrator. This Court has in the case of Hemendra V. Shah vs. Stock Exchange, Bombay and others, reported in 1995 (2) Mh.L.J. 770 has held that once the transactions are entered into through the Stock Exchange, then in that event, even in the

absence of contract notes an arbitration agreement contained in bye-law 248 is binding between the parties.

7. In the aforesaid position of the law, I find no merit in the second contention also that there is no arbitration agreement by and between the parties and/or there is no privity of contract. In the aforesaid circumstances, I do not see any merit in the petition. The petition is dismissed accordingly. However,there shall be no order as to costs.